IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5315 OF 2004

K.Srinivas S/o.late K.Ventatanarsaiah ..Applicant.

V/s.

The State of Maharashtra & Anr. ..Respondents.

Shri M.D. Rao for the Applicant.
Shri K.V. Saste, APP for Respondent No.1-State.
Ms. Kalpana Trivedi for Respondent No.2.

CORAM : A.M.KHANWILKAR, J.
DATED : FEBRUARY 11, 2005

PC :-

. Heard counsel for the parties.

2. Rule. Shri K.V.Saste, APP waives notice for Respondent No.1- State. Ms. Kalpana Trivedi waives notice for Respondent No.2. As short question is involved, the Application is taken up for final disposal forthwith by consent.

3. Briefly stated, the Applicant had approached this court for quashing of the criminal action pending against him, which petition was disposed of on 5th September, 1999 by requiring the applicant to apply to the concerned Magistrate under section 245 (2) of the

Criminal Procedure Code for discharge. According to the Applicant, in view of the said liberty granted by this court, the applicant went back before the concerned Magistrate and filed application under section 245(2) of the Cr.P.Code, which however, has been rejected by the impugned order dated 31st August, 2004 passed by the Metropolitan Magistrate, 27th Court, Mulund, Mumbai. On reading the said order, it is seen that the relevant discussion is found in paragraph 8 of the order as to what persuaded the concerned Magistrate to reject the application as filed by the applicant for discharge. The only reason recorded is that the documents on record indicate that the applicant was not prosecuted for the offence under Bureau of Indian Standard Act and for which reason, the prosecution for that offence to continue against the applicant. Grievance made before this court is that that is one reason which can be said to be relevant reason for rejecting the discharge application but the concerned Magistrate has not adverted to the argument that assuming the prosecution case, as it is, no offence is made out against the present applicant under the provisions of Bureau of Indian Standard Act. There is substance in this grievance as there is no adjudication by the concerned

Magistrate in this behalf. As the applicant has filed application for discharge with the concerned Magistrate, he was expected to advert to all the contentions including the argument that no offence is made out. As that has not been done, the only course open before this court is to, without going into the contentious issues raised before this court, relegate the application before the concerned Magistrate, who in turn shall examine the discharge application afresh on its own merits in accordance with the law. Accordingly this application succeeds with direction to the concerned Magistrate to decide the subject application afresh in view of the observations made herein before. All questions for examining the said application are left open. The Magistrate will decide the application for discharge and pass final order on the discharge application within four weeks from the receipt of the writ of this application.

4. Ordered accordingly.

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